


RESOLUTION 2016 - 21

 ORIGINAL

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SUNNYSIDE, WASHINGTON, APPROVING  
EMPLOYMENT AGREEMENT FOR CITY MANAGER  
(Donald Day)**

**WHEREAS**, the City Council of the City of Sunnyside, pursuant to Chapter 35A.13 RCW, is authorized to enter into an employment agreement for City Manager of the City of Sunnyside; and

**WHEREAS**, the City Council and Donald Day have negotiated an employment agreement for the performance of such duties; and


**WHEREAS**, the City Council finds and determines that approval of such agreement is in the best interests of residents of the City of Sunnyside and will promote the general health, safety and welfare.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYSIDE, WASHINGTON**, as follows:

**Section 1.** That the Professional Services Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved; and the Mayor of the City of Sunnyside is hereby authorized to execute such agreement for and on behalf of the City Council and the City of Sunnyside.

**Section 2.** This Resolution shall be effective upon passage, approval and signatures hereon in accordance with law.

**PASSED** this 25<sup>th</sup> day of July, 2016.

  
\_\_\_\_\_  
JAMES A. RESTUCCI, MAYOR

**ATTEST:**

  
DEBORAH ESTRADA, CMC, CITY CLERK

**APPROVED AS TO FORM:**

  
KERR LAW GROUP, LLP  
Attorneys for the City of Sunnyside

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYSIDE  
AND DONALD DAY  
FOR POSITION OF  
CITY MANAGER**

THIS AGREEMENT is made this date between the City of Sunnyside, hereinafter referred to as "City" and Donald Day, hereinafter referred to as "Manager".

WHEREAS, the City of Sunnyside in a non-charter, optional municipal code city organized under the council-manager form of government; and

WHEREAS, the City desires to contract with Donald Day to serve as City Manager, and said Donald Day desires to accept the position as the City Manager for the City of Sunnyside and

NOW, THEREFORE, in consideration of the mutual benefits to be derived, the parties hereby agree as follows:

1. Commencement of Services. The City agrees to employ Manager, and Manager agrees to accept the position of City Manager for the City of Sunnyside in accordance with the terms and conditions of this Agreement.

2. Term. This Agreement shall be effective as specified herein, upon approval by the City Council and Manager, and shall continue until terminated as provided by law, or by the provisions of this Agreement.

3. Duties. Manager shall perform all duties and obligations of the City Manager as required by law, and such other duties as are assigned from time to time by the City Council. Manager shall attend all special and regular meetings of the City Council, unless excused, and such other meetings as required by the City Council.

4. Salary. Manager shall be paid a starting salary of \$112,750.00 per year which shall be paid in accordance with the procedures for other employees of the City.

5. Benefits.

A. Miscellaneous Benefits:

(1) Holidays. Manager shall be entitled to holidays in the same manner as other City employees.

(2) Vacation. Manager shall accrue vacation time at a rate of thirty (30) days (240 hours) per year retaining all accrued vacation leave. Vacation time is capped at 300 hours per year and does not carry-over annually.

(3) Executive Leave. Manager shall receive 80 hours of Executive Leave annually in accordance with the city's personnel policy.

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(4) Sick. Manager shall accrue sick leave at a rate of eight (8) hours per calendar month of employment with a maximum possible balance of 200 hours and with a starting balance of five (5) days, which is the equivalent of forty (40) hours.

(5) Medical. The City will provide and pay the cost of the medical, optical and dental benefits under the City's health plan for Manager consistent with other City employees.

(6) Employee Insurance Benefits. The City shall provide employee insurance benefits for Manager in the same manner as other City employees.

(7) Deferred Compensation. The Manager shall be allowed to participate in the City's deferred compensation plan and the City will contribute up to the Washington State PERS standard of Manager's contributions to the plan. The PERS standard at the time of the effective date of this agreement is 9.19%, with an employee contribution requirement of at least 4.92%.

(8) Professional Development. The City will pay dues for Manager's membership in a civic organization such as Rotary, Kiwanis or Lions. The City will also provide paid attendance to the annual Washington City/County Managers Association's two annual conferences and to the International City Managers Association conference as budgeted funds allow. The City will also pay annual membership dues to Washington City/County Managers Association and the International City Manager Association as budgeted funds allow.

(9) Cell Phone. The City will provide a cell phone stipend of \$60.00 per month.

(10) Vehicle Allowance. The City will provide a monthly stipend of \$300.00 for the Manager to be used to purchase, lease, or own, operate and maintain a vehicle. The City shall reimburse the City Manager at the City standard mileage rate for any business use of the vehicle beyond the greater Sunnyside area. For purposes of this Section, use of the car within the greater Sunnyside area is defined as travel to locations within a one hundred (100) mile radius of the Sunnyside City Hall.

B. Other Benefits. Except as specifically provided in this Agreement, Manager shall not be entitled to any benefits provided or otherwise granted to other City employees.

6. Outside Activities. The employment provided by this Agreement shall be Manager's sole employment and Manager shall devote his full time and best efforts to the position of City Manager. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, Manager, with prior approval by the City Council, may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with or a conflict of interest with the responsibilities under this Agreement.

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7. Performance Review. Except as otherwise directed by the City Council, Manager's job performance shall be reviewed after the first six (6) months and first year of employment. Thereafter employment evaluations shall be conducted annually on or about the anniversary date of the Manager's commencement of employment with the City or as otherwise provided by ordinance, resolution, policy or directive of the City Council. Performance evaluations may be facilitated by a third party with the participation of the City Council.

8. Termination.

A. By the City. The parties recognize and acknowledge that Manager is an "at will" employee and agree that the City Council may terminate him/her with or without cause at any time and for any reason.

B. Termination Pay.

(1) The City agrees to pay the City Manager three (3) months aggregate salary. City Manager shall also be compensated for all vacation time in accordance with Section 5A(2), all paid holidays, and executive leave. The City agrees to make a contribution to the City Manager's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation. For a period of three (3) months following termination or until comparable coverage is obtained, whichever occurs first, the City shall pay the cost to continue the following benefits:

1. Health insurance for the City Manager and spouse
2. Life insurance

It is provided, that said sum(s) shall be subject to applicable federal withholding taxes, if any. No benefits shall be paid or accrue during the severance payment period. Provided further, that if Manager is successful in finding a similar full-time position at comparable pay during the severance payment period the severance payments will cease. In consideration and as a precondition of said payment, Manager shall execute a release in a form approved by the City Attorney of any and all claims against the City, its elected or appointed officers, employees or agents, for any claims arising out of Manager's employment and/or Manager's termination of employment with the City.

(2) If Manager is terminated for "just cause", then Manager shall not be entitled to any severance or termination pay. "Just cause" for purposes of this Agreement means misconduct, including but not limited to commission of a criminal act, neglect of duty, violation of written or oral directives of the City Council, violation of any rules, regulations, policies or procedures of the City, sexual or other discriminatory harassment in violation of state or federal anti-discrimination law, malfeasance or misfeasance, any conduct that would have an adverse effect upon the performance of the Manager's duties or reflect detrimentally upon the City, or any other just cause supported and consistent with Washington law.

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C. Termination by Manager. In the event Manager elects to terminate his employment with the City for any reason, Manager agrees to attempt to provide the City with not less than sixty (60) days' notice prior to the effective date of said termination of employment. Notwithstanding the foregoing notice requirement, nothing shall prevent the City Council upon receiving Manager's notice of intent from compensating Manager at the rate of Manager's base salary for the unexpired portion of the sixty-day notice and releasing Manager prior to the expiration of said notice.

9. Integration. This agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise, that have not been fully set forth in the text of this Agreement.

10. Modification. The parties agree that this Agreement can be amended or modified only with the written concurrence of both parties.

11. Notices. Any notice required to be given under this Agreement shall be delivered or mailed to the following parties at the following addresses:

**THE CITY OF SUNNYSIDE**

**Attn: Office of the Mayor**

Address as

818 East Edison Avenue  
Sunnyside, WA 98944

**CITY MANAGER**

Last Known Address on  
file with the City at time of  
mailing or personally at such  
address or at City Hall

Notices may be delivered either personally to the addressee of the notice, or may be deposited in the United States mail, postage prepaid to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

12. Authorization of Facsimile Copies. Both parties agree that upon Manager signing a facsimile copy of this Agreement, transmitting the same to the City, and upon the Mayor signing said facsimile copy, that both parties shall be bound by the terms and provisions of this Agreement. Both parties shall subsequently execute the original, non-facsimile copies of this Agreement which shall be substituted for the signed facsimile copy.

13 General Provisions. Failure to enforce any provision of this agreement shall not constitute waiver of said provision. This agreement represents the entire agreement between the parties. Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith attempt to resolve the dispute. Any unresolved dispute shall be submitted to arbitration. The dispute shall be submitted to a single arbitrator mutually agreed by the parties. If the parties are unable to agree, the arbitrator shall be determined by the Yakima County Superior Court, and arbitration shall be conducted pursuant to RCW 7.04A, with both parties waiving the right to jury trial in the event of a de novo appeal. Arbitration shall be conducted in Sunnyside, Yakima County, Washington, and the costs of the arbitration shall be equally borne by the parties, and the arbitrator shall award, as additional judgment against the other, attorney's fees and costs to the prevailing party.



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14. Effective Date. All compensation and benefits under this Agreement shall begin to accrue as of Manager's anniversary date, July, 29, 2016, which shall be the effective date of this Agreement.

DATED this 25th-day of July, 2016.

**CITY OF SUNNYSIDE:**

**DONALD DAY:**

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk